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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,507	09/08/2003	William H. Shepard	05918-133002	9338
26161	7590	02/03/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/657,507

Applicant(s)

SHEPARD ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 8,22 and 24-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration under 37 CFR 1.132 filed January 3, 2006 is sufficient to overcome the rejection of claims 1 – 7, 9 – 11, 13 – 21, and 39 based upon Shepard et al. (WO 99/11452). The declaration established that Shepard et al. does not qualify as a 102(a) reference since Mr. Shepard was the sole inventor of the information used to reject the claimed invention, and is therefore, not invented by another.
2. Claims 1 – 39 are pending. Claims 8, 22, and 24 – 38 are withdrawn from further consideration as being drawn to a nonelected invention.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1 – 7, 9 – 11, 13 – 21, and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lawless (5,891,547) in view of Franz and Nemec et al. for the reasons of record.
5. Claims 1 – 2, 4, 5, 6, 9, - 11, 13 – 20, and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nemec et al. in view of Lawless and Franz for the reasons of record.
6. Claim 23 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard et al., Franz, and Nemec et al. as applied to claim 1 above, and further in view of Powell (5,603,504), and Bricker (5,664,780) for the reasons of record.

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Claim 23 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Lawless, Franz, and Nemec et al. as applied to claim 1 above, and further in view of Powell and Bricker for the reasons of record.

Claim 23 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Nemec et al., Lawless, and Franz as applied to claim 1 above, and further in view of Powell and Bricker for the reasons of record.

***Response to Arguments***

7. Applicant's arguments filed January 3, 2006 have been fully considered but they are not persuasive. The applicant argue that the rejection based on Lawless does not have the appropriate expectation of success since bonding the lightweight nonwoven loop fabric to the porous paper substrate would require too much glue, so that the loop material is covered in the glue and not functional as a loop material (response, pages 3 – 5). In other words, it is the applicant's position that based on the teachings of the prior art, one of ordinary skill in the art would add too much glue due to the porosity of the paper material as opposed to the other materials Lawless discloses can used as backing materials.

This arguments is not persuasive because Lawless teaches that porous materials including nonwoven fabrics, knit and woven fabric and foams can be used as the backing material (column 5, lines 45 – 65). Lawless does not seem to suggest that a porous material would be difficult to create a bond with, or that the adhesive material would significantly effect the ability of the loop material at all. Instead, the backing layer is added to provide the lightweight nonwoven fabric with additional dimensional stability, which a paper substrate would be able to do. Further, Lawless, discloses that various types of adhesives and methods of applying the adhesive layer

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can be used to produce the composite material (column 6, lines 1 – 42). While Lawless does disclose a amount that the adhesive can be added to the composite material, Lawless seems to imply it would be within the level of skill of one in the art to choose the type of adhesive, the method of applying the adhesive, and the amount of adhesive added to produce the composite material without undue experimentation. Hence, Lawless discloses using various substrates which are porous, some even more porous than paper materials, and discloses that various adhesive and adhesive methods can be used to produce the composite material.

Thus, without further evidence to support the arguments that one of ordinary skill in the art would have difficulty bonding a paper substrate to a lightweight nonwoven loop material while maintaining the functionality of the loop material, the rejection based on Lawless is maintained. The arguments of counsel cannot take the place of evidence. *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

8. The applicant argues that the additional rejections based on Nemec, which include Lawless as a secondary reference, should also be withdrawn for the same reason (response, page 5). However, as set forth above this reasoning is not considered sufficient to overcome the rejections which include Lawless. Therefore, the rejections based on Nemec are also maintained.

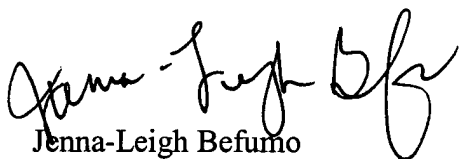
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jenna-Leigh Befumo', is written over the printed name.

Jenna-Leigh Befumo  
February 1, 2006